IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No. 4940 of 2002.
Date of Decision: September 01, 2006.

Gurchetan Singh & Ors.

....**Appellants.**

through
Mr. K.SCheema, Advocate

Versus

Lal Singh & Ors.

...**Respondents**

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This Regular Second Appeal has been preferred by the plaintiffs whose suit for declaration to the effect that they have become owners in possession of the subject land, has been dismissed by both the Courts.

Shorn of unnecessary details, it appears that the subject land was previously owned by Munshi who mortgaged the same in favour of Jhalmar Singh and Mohan Singh- predecessors-in-interest of the plaintiff-appellants in the year 1944 for a consideration of Rs.170/-. Munshi had two sons, namely, Khusia and Mallu. Smt. Karmi the deceased-respondent is widow of Mallu.

It also appears that when the respondent-defendant asserted her

right as owner in possession of the subject land, the plaintiff-appellants filed the present suit claiming, inter-alia, that the mortgage executed in the year 1944 was never redeemed and the statutory period of thirty years having expired, they have become owners in possession of the subject land.

The suit was, however, contested by Smt. Karmi. On the basis of pleadings of the parties, learned trial Court framed the following issues :-

> "1. Whether the plaintiffs are entitled to the declaration as prayed for?OPP.
> 2. Whether the plaintiffs are entitled to the permanent injunction as prayed for as consequential relief?OPP
> 3. Whether in the alternative, plaintiffs are entitled for possession as owner of the suit property as prayed for?OPP
> 4. Whether the plaintiffs have got no locus standi to file the present suit?OPD
> 5. Whether the suit is not properly valued for purposes of court fee and jurisdiction?OPD
> 6. Relief".

In order to discharge their onus in respect of Issue No.1, the plaintiff-appellants placed reliance upon the old revenue record comprising of Jamabandi of the relevant year which they failed to tender in evidence and is only marked as "A". On the strength of the recitals in the said revenue record, it was contended before the learned trial Court that the mortgage in question has not been redeemed. On the other hand, the respondent-defendant produced a compromise deed (Ex.D1) dated 18.7.1993 claiming to have been executed between her and the plaintiff-appellants. The scribe of the said compromise deed, namely, Banarsi Dass has also been produced as DW1, apart from one of the attesting witnesses,

namely, Kuldeep Singh Namberdar as DW2.

True it is that in the document (Mark A), the cultivation column suggests that Munshi Ram had mortgaged the land with Khusia without possession for a sum of Rs.170/-, however, the Courts below have refused to consider the said document being inadmissible in evidence and have rather relied upon the compromise deed (Ex.D1) and in terms thereof have held that the amount of mortgage money had already been received by Khusia. Since the execution of the compromise deed has been admitted by the appellants also, as noticed by the learned trial Court while returning findings on Issues No. 1, 2 and 3, no fault can be found with the concurrent findings of fact returned by both the Courts that the land in dispute had already been got redeemed and thereafter the defendant-respondent (Smt. Karmi) continued to be its absolute owner in possession without.

As the findings noticed above are pure findings of fact and do not give rise to any substantial question of law, no interference by this Court in exercise of its appellate jurisdiction in this Regular Second Appeal is called for.

Dismissed.

September 1, 2006. **(SURYA KANT)**
dinesh **JUDGE**